

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

**Comments of
The Public Service Commission of Wisconsin**

The Public Service Commission of Wisconsin (Wisconsin Commission) respectfully files these comments in response to the Order and Notice of Proposed Rulemaking (Notice)¹ released August 20, 2004, in the above-captioned proceeding.

The Notice sets forth a 12-month plan to address unbundled network elements (UNEs) eliminated pursuant to the *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (2004) (*USTA II*), decision which addressed the Federal Communications Commission's (FCC's) Triennial Review Order (TRO).² The Notice also requests that information be filed by the states regarding their investigations commenced pursuant to the TRO and asks for comment regarding establishing new sustainable unbundling rules.

¹ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking (rel. Aug. 20, 2004).

² *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003), corrected by Errata, 18 FCC 19020, vacated in part, *USTA II*, 359 F.3d 554.

These comments address three matters in the Notice: 1) provision of the Wisconsin TRO docket summaries requested in para. 15, 2) implementation of the UNE pricing adjustment in para. 29, and 3) the issue of proper treatment of commercially negotiated agreements for network elements not required to be unbundled as presented in para. 13.

Summary of Comments

1. The parties to the Wisconsin TRO cases will file summaries of the information collected in those proceedings; the Wisconsin Commission will not file a separate set of summaries.
2. Before the rate rules are applied, the FCC needs to clarify:
 - who qualifies as a customer in the term “embedded customer base,” and
 - that the 15 percent increase in rates after six months does not apply to rates increased by more than 15 percent by a state commission during that 6-month period.
3. The Wisconsin Commission is not commenting regarding the proper treatment of commercially negotiated agreements due to a case pending before it, but may provide its order to the FCC at a later date.

Wisconsin TRO data

On September 20, 2004, the Wisconsin Commission convened a Status Conference in the Wisconsin TRO-related dockets 05-TI-908, 05-TI-909, and 05-TI-910 and docket 05-TI-824 to discuss with the parties how information from the Wisconsin TRO dockets might be submitted to the FCC in accordance with the instructions in para. 15 of the Notice. Wisconsin Commission staff offered assistance in coordinating

the filing of a joint summary of uncontested facts in the Wisconsin TRO dockets. AT&T of Wisconsin, L.P., MCI Telecommunications Corporation, and Wisconsin Bell, Inc., d/b/a SBC Wisconsin (SBC), stated they had already begun preparing their own summaries of these proceedings to file along with their comments. They agreed that given the short time for comment they were not able to commit to creating the joint summaries. These parties stated they will prepare summaries of the proceedings in these cases and submit them to the FCC along with their comments. Therefore, as advised by the parties, to avoid duplication of information and confusion, the Wisconsin Commission has not created its own summaries of these proceedings. When these party filings are made, the Wisconsin Commission will examine them and advise the FCC should there be any anomalies presented or matters that need clarification.

Transitional Rate Increases

Paragraph 29 of the FCC's Interim TRO Order and Notice is not entirely clear. On p. 16, the Transition Period holds that an incumbent local exchange carrier (ILEC) must lease an enterprise market loop and/or dedicated transport at a rate equal to the higher of (1) 115 percent of the June 15, 2004, rate for the element or (2) 115 percent of a rate "ordered" by a state-commission between June 16, 2004, and six months after Federal Register publication (which may be in March 2005). This transition rate is only to apply to the "embedded customer base." However, no method or date is specified for determining the applicable embedded customer base. The Wisconsin Commission recommends that all customers on the last day of the 6-month interim period be defined as the embedded customer base. Further complicating this matter is the potential for varying interpretations of who qualifies as a "customer." Does a customer include an

entity for whom on the 6-month date a competitive local exchange carrier (CLEC) has a signed contract in hand or has a service order pending? Or is the term “customer” limited to an entity for whom the CLEC is already providing live service? The FCC should clarify this issue before the application of rates takes place.

The manner in which the 115 percent rate increase may be applied is also ambiguous. Although at p. 16, the FCC indicates that an ILEC must lease an enterprise market loop and/or dedicated transport at a rate equal to the higher of (1) 115 percent of the June 15, 2004, rate for the element or (2) 115 percent of a state-commission set rate "ordered" between June 16, 2004, and six months after Federal Register publication, there is an ambiguous footnote (number 69) that suggests if a state commission orders a rate in the transition period that is greater than 115 percent, that rate is *in place of* the 115 percent rate. But the way the Order and Notice reads now, an ILEC could use the ambiguity for its own anti-competitive ends. For example, if the Wisconsin Commission authorized a rate 20 percent greater than the June 15, 2004, rate on October 1, 2004, an ILEC could interpret the Notice to allow it to further increase that rate by 15 percent of the just-increased rate. This would result in a rate that is 138 percent of the June 15, 2004 rate, not 120 percent as authorized by the Wisconsin Commission, nor 115 percent as authorized by the FCC. If unchecked, this could lead to ILEC refusal to lease at all to a CLEC, if it does not agree with the highest rate calculation. The effect could be especially harmful if a significant portion of the short transition period is wasted for the problem to be recognized and resolved.

Continuing to use that example, the Wisconsin Commission believes that by Footnote 69, the FCC meant to require leasing at the 120 percent level, not to create a 15 percent adder on any rate already increased more than 15 percent. In the absence of further clarification, the Wisconsin Commission will oversee the transition with that understanding.

Commercial Agreements

The Wisconsin Commission is also very interested in the resolution of proper treatment of commercially negotiated agreements for network elements not required to be unbundled as presented in para. 13 of the Notice. That issue is before the Wisconsin Commission in an open docket, 05-TI-1054, addressing the interconnection agreement between SBC Wisconsin and Sage Telecom, Inc. The Wisconsin Commission might appear to prejudge the outcome of that case if it expressed an opinion to the FCC on the matter in these comments. Therefore the Wisconsin Commission will not comment on the subject at this time. The reply comments in that Wisconsin Commission docket are due October 8, 2004. When the Wisconsin Commission has decided the matter, depending on the timing and content of its decision, it may forward the resulting order to the FCC for consideration as late filed comments.

Conclusion

The Wisconsin Commission appreciates the FCC's careful consideration of these comments. We trust they will be helpful to the FCC in its monumental task of rewriting

the TRO rules to implement the *USTA II* decision in a way that provides a smooth transition for CLECs and their customers.

Dated at Madison, Wisconsin, September 30, 2004

By the Commission:

/s/ *Lynda L. Dorr*

Lynda L. Dorr
Secretary to the Commission

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